

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

**FILED**10-01-14  
04:40 PM

October 1, 2014

Agenda ID#13354  
Alternate to Agenda ID#13072  
Quasi-legislative**TO PARTIES OF RECORD IN RULEMAKING 12-12-011:**

Enclosed is the Alternate Proposed Decision of Commissioner Catherine J.K. Sandoval to the Proposed Decision of Commissioner Michael R. Peevey previously mailed to you. The proposed decision is currently on the Commission's October 2, 2014 Agenda as Item 37. Due to the issuance of this alternate, these items will be held to the November 6, 2014 Commission Meeting. This cover letter explains the comment and review period and provides a digest of the alternate decision.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a proposed decision or to a decision subject to subdivision (g) be served on all parties, and be subject to public review and comment prior to a vote of the Commission.

Parties to the proceeding may file comments on the alternate proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3 opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Mason at [rim@cpuc.ca.gov](mailto:rim@cpuc.ca.gov) and Commissioner Sandoval's advisor William Johnston at [wej@cpuc.ca.gov](mailto:wej@cpuc.ca.gov). The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan

Chief Administrative Law Judge (Acting)

TJS:sbf

Attachment

## Digest of Differences

## ATTACHMENT

Issue No.	Topic	Proposed Decision	Alternate
1	Insurance Coverage Requirement for Period One until July 1, 2015, when AB 2293 becomes effective.	Requires TNCs to carry a minimum of \$100,000 in commercial coverage	Imposes, within 30 days of the issuance of the alternate, the requirements of AB 2293 now that will become effective July 1, 2015. Requires TNCs to carry primary coverage of at least \$50,000 for death and personal injury per person, \$100,000 for death and personal injury per incident, and \$30,000 for property damage. Requires TNCs to carry excess coverage of at least \$200,000 per occurrence
2	Insurance Code Section 1763	Does not mention Insurance Code Section 1763	Requires insurance be issued by a company licensed to write insurance in California, or by non-admitted insurers subject to Insurance Code Section 1763
3	Application of modified insurance requirements to Uber Technologies, Inc.	The modified insurance requirements will apply only to Uber Technologies,	The modified insurance requirements apply to Uber Technologies, Inc. In Phase II, Uber

		Inc.'s subsidiary, Rasier (UberX).	Technologies, Inc. can argue and prove why the modified insurance requirements should only apply to Rasier (UberX).
4	Should the reporting requirements of Rule 8.4 for <i>ex parte</i> communications apply to this quasi-legislative proceeding	Follows the existing rule that in any quasi-legislative proceeding, <i>ex parte</i> communications are allowed without restriction or reporting requirements. (Rule 8.3.)	All <i>ex parte</i> communications in this quasi-legislative proceeding must be reported. In addition, the reporting requirements of Rule 8.4 also apply to any communications between interested persons and the Commission's Policy and Planning Division.

COM/CJS/ek4    **ALTERNATE PROPOSED DECISION**    Agenda ID #13354  
Alternate to Agenda ID# 13072  
Quasi-legislative

Decision **ALTERNATE PROPOSED DECISION OF  
COMMISSIONER SANDOVAL** (Mailed 10/1/14)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on  
Regulations Relating to Passenger  
Carriers, Ridesharing, and New  
Online-Enabled Transportation Services.

Rulemaking 12-12-011  
(December 20, 2012)

**DECISION MODIFYING DECISION 13-09-045 ADOPTING RULES AND  
REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW  
ENTRANTS TO THE TRANSPORTATION INDUSTRY**

## Table of Contents

Title	Page
SECOND DECISION MODIFYING DECISION 13-09-045 ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY.....	1
Summary .....	2
1. Procedural History.....	5
1.1. Decision (D.) 13-09-045 .....	5
1.2. The Assigned Commissioner’s Ruling (ACR).....	6
1.3. Decision (D.) 14-04-022 .....	8
1.4. The Decision Modifying D. 13-09-045 .....	8
1.5. The Passage of AB 2293. ....	9
2. Defining the phrase “Providing TNC Services” .....	9
2.1. Comments on the ACR .....	9
2.2. Discussion.....	12
2.2.1. Defining “Providing TNC Services” .....	12
2.2.1 Providing TNC Service is a business enterprise that is not Covered by Current Forms of Personal Automobile Coverage.....	17
3. The Commission has the Authority to Adopt Insurance Requirements for TNCs that Differ from the Insurance Requirements Mandated for Charter Party Carriers (TCPs) and Passenger Stage Corporations (PSCs).....	22
3.1. The Insurance Requirements for TCPs and PSCs.....	22
3.2. The Commission has the Authority to Impose Insurance Requirements for TNCs that Differ from the Insurance Requirements for TCPs and PSCs .....	25
3.2.1. Commission Law and the Public Utilities Code.....	25
3.2.2. Legislative Authority .....	26
4. The Importance of Making TNCs Purchase Primary Liability Insurance Coverage for Period One and Period Two .....	28
5. The Importance of Also Requiring Excess Insurance for Period One....	33
6. Additional Insurance Requirements .....	37
6.1. Comments on the ACR .....	37
6.2. Discussion.....	40
6.2.1. What is and is not covered by Commercial Liability Insurance .....	40

6.2.2. TNCs must provide Uninsured/ Underinsured Motor Vehicle Coverage.....	41
7. The Importance of the Requirement that Companies Providing TNC Insurance be Licensed to Write Such Insurance in the State of California, or Comply with Insurance Code § 1763. ....	44
7.1. Comments .....	44
7.2. Discussion .....	44
8. Applying the Modified Insurance Requirements to Uber Technologies, Inc. (Uber).....	47
8.1. Comments on the ACR .....	47
8.2. Discussion .....	48
9. All <i>Ex Parte</i> Communications Must be Reported in this Quasi-Legislative Proceeding. ....	49
9.1. Comments on ACR.....	49
9.2. Discussion.....	50
10. The Reporting Requirements set forth in Rule 8.4 shall cover communications between “interested persons” and the Commission’s Policy and Planning Division.....	53
11. Comments on the Second Modification of D.13-09-045 .....	54
12. Assignment of Proceeding.....	54
Findings of Fact .....	54
Conclusions of Law .....	56
ORDER .....	57

**DECISION MODIFYING DECISION 13-09-045 ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY**

**Summary**

This *Decision modifying Decision (D.) 13-09-045*, which adopted rules and regulations for New Online Enabled Transportation Services, referred to hereafter as a Transportation Network Company<sup>1</sup> (TNC), is being issued to reflect the changes in TNC law occasioned by Governor Brown's recent signage of Assembly Bill (AB) No. 2293 (Bonilla). The substantive changes to D. 13-09-045 are as follows:

First, 'providing TNC services' is defined as follows:

"Transportation network company services" refers to the period of time that commences when a participating driver in a transportation network company logs onto the transportation network company's online-enabled application or platform and ceases when the participating driver logs off the transportation network company's online-enabled application or platform. Transportation network company services have two distinct time periods, as follows:

- (1) Period One runs from the time a participating driver logs onto the transportation network company's online-enabled application or platform until the driver accepts a request to transport a passenger.
- (2) Period Two runs from the time a participating driver accepts a ride request on the transportation network company's online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the passenger safely exits the vehicle, whichever is later.

---

<sup>1</sup> In the Rulemaking, we referred to these companies as New Online-Enabled Transportation Services. We are changing the acronym to Transportation Network Company (TNC) for ease of use.

Second, notwithstanding the coverage options described for Period One and Period Two, the vehicle used by a participating driver in TNC services shall be considered a public or livery conveyance and shall be considered as providing delivery of persons or passengers for compensation or a fee. Unless coverage for transportation network services is separately and specifically stated in an insurance policy and priced pursuant to approval by the Department of Insurance, a participating driver's personal automobile insurance policy shall not provide coverage for transportation network company services, and the insurer under that policy shall have no duty to defend and/or indemnify for claims resulting from provision of those services.

Third, the requirement that TNCs maintain liability insurance policies is modified as follows:

- (1) Period One: the TNC insurance shall be primary and in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. The TNC shall also maintain at least two hundred thousand dollars (\$200,000) in excess coverage insuring the TNC and the driver that will apply on a per incident basis to cover any liability arising from a participating driver using a vehicle in connection with a TNC's online-enabled application or platform.
- (2) Period Two: the TNC insurance shall be primary and in the amount of one million dollars (\$1,000,000) per incident for death, personal injury, and property damage. TNCs shall also maintain uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) per incident that shall apply from the moment a passenger enters the vehicle of a participating driver until the passenger safely exits the vehicle. The uninsured motorist coverage and underinsured motorist coverage may also apply during any other part of Period Two if requested by the participating driver.

Fourth, the requirements for the coverage required for Period One may be satisfied by any of the following:

- (a) Transportation network company insurance maintained by a participating driver;
- (b) Transportation network company insurance maintained by a transportation network company that provides coverage in the event a participating driver's insurance policy has ceased to exist or has been cancelled, or the participating driver does not otherwise maintain transportation network company insurance; or
- (c) Any combination of (a) and (b).

Fifth, the requirements for the coverage required by Period Two may be satisfied by any of the following:

- (a) Transportation network company insurance maintained by a participating driver;
- (b) Transportation network company insurance maintained by a transportation network company; or
- (c) Any combination of (a) and (b).

Sixth, the insurer providing coverage for Period One, Period Two, or both, shall have the duty to defend and indemnify the insured.

Seventh, the insurances that we require for the TNCs must be issued by a company licensed to write insurance in this state, or by non-admitted insurers subject to Insurance Code § 1763.

Eighth, these modifications shall also apply to Uber Technologies, Inc., as it is enjoying the privilege of conducting business in California.

Ninth, the Commission exercises its authority under Rule 1.2 of the Commission's Rules of Practice and Procedure (Rules) to make Rule 8.4 (Reporting *Ex Parte* Communications) applicable to this proceeding. In addition,

the Commission determines that this reporting requirement should, and hereby does, cover communications between “interested persons,” as defined in Rule 8.1(d), and the Commission’s Policy and Planning Division.

Finally, those portions of D.13-09-045 that have not been modified by either this decision or Decision (D.) 14-04-022, remain in force and effect.

## **1. Procedural History**

### **1.1. Decision (D.) 13-09-045**

On September 23, 2013, the Commission issued *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, D.13-09-045, to apply to all TNCs operating in California to ensure that “public safety is not compromised by the operation of this new transportation business model.”<sup>2</sup> Among other requirements established in that decision, we required each TNC (not the individual drivers) to obtain a permit from the California Public Utilities Commission (Commission), required criminal background checks for each driver, established a driver training program, implemented a zero-tolerance policy on drugs and alcohol, required a vehicle safety check, and required a minimum of \$1 million in commercial liability insurance coverage.

That decision ordered a second phase to this proceeding to review the Commission’s existing regulations over limousines and other charter-party carriers to ensure that the public safety rules are up to date, and that the rules are responsive to the needs of today’s transportation market. In addition, the second phase will consider the potential impact of any legislative changes that could affect our ability to regulate the TNC industry and potentially other changes or

---

<sup>2</sup> D.13-09-045 at 2.

modifications to prior decisions regarding TNCs. When the second phase is complete, the Commission will initiate the Commission's resolution process to update the General Orders 115 and 157 to include the new regulations relating to TNCs.

### **1.2. The Assigned Commissioner's Ruling (ACR)**

As this is a new industry, the Commission knew that the rules and regulations it enacted might need to be clarified or modified as real-time information about TNC operations became known. Thus, D.13-09-045 stated that there would be a Phase II to this proceeding that would, at a minimum, consider the impacts "of this new mode of transportation and accompanying regulations" and to make any modifications or enact additional regulations to ensure public safety.<sup>3</sup> While the Commission's Rule 16.4 sets forth the procedure for a party to file a petition for modification, the Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

The Commission has utilized its authority to make modifications or alterations if there is a change of factual or legal circumstances, to clarify uncertainties, or to correct minor errors in the text.<sup>4</sup> As such, an ACR was issued

---

<sup>3</sup> *Id.*, at 74, Ordering Paragraph 10.

<sup>4</sup> For example, an Assigned Commissioner's Ruling was issued on July 9, 2010 in Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues, R.10-05-004.

on March 25, 2014, requesting comment on five proposed modifications to D.13-09-045.<sup>5</sup>

In addition to the implications of new information about the TNC industry that might necessitate modifications to D.13-09-045, the need to issue the ACR was driven by a number of other considerations. First, the phrase “providing TNC services” has been interpreted in different ways by parties and their insurers; second, there was some uncertainty over whether a TNC driver’s personal automobile insurance would apply to an incident where the TNC driver is wholly or partially at fault, the TNC application (app) is open, and there is no passenger in the vehicle; and third, the Commission analyzed whether each TNC should provide coverage beyond commercial liability insurance required by D.13-09-045 in light of concerns raised by the California Insurance Commissioner and others about potential gaps in TNC insurance such as the lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. As a result of these uncertainties, there are a number of different situations where either no coverage or differing coverages may be available, and the ACR proposed modifications so that coverage is provided on a consistent basis. The ACR also invited the parties to comment on these, and other, proposed changes.

The following parties filed opening comments to the ACR: SideCar, Lyft, United Taxicab Workers, SFMTA, San Francisco Cab Association, Luxor, TPAC, Uber, PIFC, Greater Livery, and Tickengo. The following parties filed replies to the ACR: Sidecar, Lyft, United Taxicab Workers, SFMTA, San Francisco Cab

---

<sup>5</sup> ACR, at 2-3.

Association, TPAC, Uber, Christopher Dolan, and the Dolan Law Firm (collectively referred to as Dolan).<sup>6</sup>

### **1.3. Decision (D.) 14-04-022**

In the midst of receiving comments to the ACR, this Commission on April 11, 2014 issued D.14-04-022, *Order Granting Limited Rehearing of D.13-09-045, Modifying Certain Holdings, and Denying Rehearing of the Remaining Portion of the Decision, as Modified*, which, *inter alia*, ordered modifications to certain holdings in order to explain the Commission's holdings and rationale more clearly. We do not reiterate those modifications herein and, instead, instruct any interested persons to consult D.14-04-022 to see how D.13-09-045 was modified.

### **1.4. The Decision Modifying D. 13-09-045**

On June 10, 2014, the Commission mailed its *Decision modifying D. 13-09-045*. The modifications dealt with the definition of providing TNC services, the attendant insurance that would be required, and the reporting of communications between decision-makers and interested persons.

On July 8, 2014, the Commission mailed its Revision 1 to its *Decision modifying D.13-09-045*.

The *Decision modifying D.13-09-045* (Rev. 1) has been held for several Commission meetings pending the Legislature's action on AB 2293.

On September 18, 2014, the Commission mailed Revisions 2 (which made substantive changes) and 3 (which made nonsubstantive changes) to *Decision modifying D.13-09-045*. These revisions were made in light of comments from the parties, and due to the enactment of AB 2293.

---

<sup>6</sup> Christopher Dolan and the Dolan Law Firm were granted party status, with limitations, by way of an e-mail ruling on April 7, 2014.

**1.5. The Passage and Enactment of AB 2293.**

On August 27, 2014 and August 28, 2014, the Senate and the Legislature, respectively, passed AB 2293 which mandated specific liability insurance coverage requirements for TNCs. On September 17, 2014, Governor Brown signed AB 2293 into law, and it became part of Article 7 (commencing with § 5430) to Chapter 8 of Division 2 of the Pub. Util. Code, relating to transportation. A copy of AB 2293 is attached hereto as Appendix A. AB 2293 also promulgated helpful definitions that we will incorporate into this decision's ordering paragraphs (OP or OPs).

Despite the Legislature's direction in this matter to which this Commission must follow, AB 2293 is not scheduled to take effect until July 1, 2015. Thus, it is incumbent on this Commission to issue a decision now as a bridge that implements the requirements of AB 2293 and requires that all TNCs comply with these requirements within 30 days after the issuance of this decision.

In addition, since AB 2293 has adopted insurance requirements that are inconsistent with the insurance requirements for TCPs and PSCs, it will be necessary for the Commission to reconcile its authority to pass insurance requirements that are consistent with the Legislature's dictates but at odds with the existing insurance requirements for TCPs and PSCs.

**2. Defining the phrase "Providing TNC Services"****2.1. Comments on the ACR**

California Airports Council believes the definition must include the time a TNC driver is waiting for notification of new patrons and the time between trips.

City and County of San Francisco supports closing the insurance gap but questions if the proposed modification is sufficient. The City proposes that "providing TNC services" should include those periods in which a driver is:

(1) en route to pick up a TNC passenger; (2) transporting a TNC passenger; (3) picking up a TNC passenger; (4) dropping off a TNC passenger; or (5) situated in the TNC vehicle while the app is open or the driver is otherwise available to accept rides from a subscribing TNC passenger.

Dolan supports defining this phrase but suggests changing “whenever the TNC driver is using their vehicle” to “whenever the TNC driver is using a vehicle.” Additionally, the phrase “as a public or livery conveyance” should be changed to read “for the purpose of facilitating the actual or prospective transportation of the public, including but not limited to the time that they initially log onto, open, or otherwise indicate their availability as open and available to accept passengers through, a TNC app, until the driver has logged off, closed the application or otherwise indicated they are no longer available to provide TNC services.” Dolan asserts this coverage would be similar to what is afforded by other transportation providers such as taxis.

Luxor argues that a vehicle become a commercial vehicle as soon as the driver registers his or her vehicle with a TNC. Otherwise, Luxor fears that there is an open invitation for insurance fraud.

Lyft does not believe the Commission should create a new definition of “providing TNC services” as the current definition is clear and unambiguous. Additionally, adding the phrase “whenever the TNC driver is using their vehicle as a public or livery conveyance” will create ambiguity with the balance of the Phase I decision. The app on/app off concept will also throw the entire regulatory framework into chaos as the decision contemplated a nexus between the provision of transportation for compensation and the concept of providing TNC services. Also, there is no universally accepted meaning of the terms “open,” “closed,” or “available to accept rides.”

PIFC suggests defining the phrase to mean “when participating drivers make themselves available for passengers, which includes, but is not limited to, logging on to the transportation network company’s application program, attaching an insignia or logo indicating the personal motor vehicle as providing transportation network services, or having a fare-paying passenger getting into or out of the vehicle.” PIFC believes this definition will accomplish the Commissioner’s goal of removing gaps in the commercial liability coverage.

San Francisco Cab Drivers Association opposes the proposed definition and instead believes either the TNC or the TNC driver needs to provide each vehicle with 100% insurance coverage, 100% of the time.

SideCar believes the proposed definition is overbroad and would subject TNCs to fraud by unscrupulous drivers and higher than necessary insurance costs.

Summons proposes limiting “providing TNC services” to only those times when TNC drivers are en route to a passenger or are transporting a passenger.

TPAC suggest that rather than basing insurance upon a limited time frame when TNC driver has a specific app open, the appropriate commercial auto liability insurance policy would cover the vehicles being used to provide transportation services at all times. The commercial auto liability insurance policy should be commensurate with at least the minimum charter-party carrier requirements for TNCs that provide exclusively pre-arranged services.

Uber suggests that the Commission should maintain the original language of the D.13-09-045 with regard to the period during which commercial TNC third-party liability insurance shall apply. While Uber supports establishing coverage requirements for Period One (*i.e.*, the driver’s app is open, but the TNC driver has not yet accepted a request for transportation), the Commission should

allow the TNCs and the insurance industry to fashion market-based solutions to address the coverage needs during that period. Uber is also concerned about a TNC driver in Period One having contracted with multiple TNCs and keeping all apps open at all times in order to maximize the likelihood of procuring a request for transportation. Uber suggests defining “providing TNCs services” as follows: “Whenever the TNC driver is using their vehicle as a public or livery conveyance, which is from the time the TNC driver accepts a passenger’s request to prearrange transportation services until the time the TNC driver concludes providing such transportation services to the passenger.” As for levels of insurance during Period One, Uber suggests the Commission should mandate coverage “at least at the limits required by state personal auto policies, but leave open the question of who may purchase such coverage.”

United Taxicab Workers do not believe the proposed modifications will close the TNC coverage gaps.

## **2.2. Discussion**

### **2.2.1. Defining Providing TNC Services**

D.13-09-045 uses the phrase “providing TNC services” in a manner that may have caused some confusion. Ordering Paragraph (OP) 6 states that we “require TNCs to maintain commercial liability insurance policies providing not less than \$1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers while they are providing TNC services.”<sup>7</sup> However, some parties argue that D.13-09-045 did not clearly define “providing TNC services” in a manner that would guide TNCs, their insurers, and other stakeholders regarding the Commission’s directive. Some parties raised this

---

<sup>7</sup> D.13-09-045 at 73, OP 6.

uncertainty in their applications for rehearing. For example, in its *Application of the TPAC for Rehearing of D.13-09-045*, TPAC argues that the “Decision fails to state whether a TNC driver is considered to be providing TNC services when en route to picking up a passenger, when returning from dropping off a passenger, or when a driver is cruising an area while awaiting a ride request.”<sup>8</sup>

California’s Department of Insurance has also recognized this potential uncertainty<sup>9</sup> and has advocated defining “providing TNC services” to cover the following three periods: Period One (App Open – No Match); Period Two (Match Accepted – Passenger Pick-Up); and Period Three (Passenger in the Car – Passenger has safely exited the vehicle).<sup>10</sup>

Additionally, some of the TNC insurance companies have adopted a definition of “providing TNC services” that may be unnecessarily restrictive and could create gaps in an injured party’s reasonable coverage expectations. Although we instructed the TNCs to submit their insurance policies under seal, we can state, without violating any privacy expectations, that some carriers do not provide coverage for the Period One identified by the California Department of Insurance.

This apparent disconnect over the Commission’s meaning of “providing TNC services,” how a TNC defines “providing TNC services,” and how an insurance company defines “providing TNC services,” may have taken on real-life ramifications as a result of the circumstances that occurred on December 31, 2013, where a TNC driver struck a family in a crosswalk, killing

---

<sup>8</sup> Application, at 23 and fn. 129.

<sup>9</sup> See Department of Insurance letters dated January 10, 2014, March 25, 2014, and Background White Paper updated April 1, 2014.

<sup>10</sup> Department of Insurance letter dated April 7, 2014.

one of the pedestrians.<sup>11</sup> On January 1, 2014, the TNC issued a press release entitled “Statement on New Year’s Eve Accident” in which it claimed “but we can confirm that this tragedy did not involve a vehicle or provider doing a trip on the [TNC] system.”<sup>12</sup> It is unclear what “doing a trip on the [TNC] system” means. Does it mean that a TNC driver must have accepted and is en route to pick up the subscribing TNC passenger, that the subscribing TNC passenger is physically in the TNC driver’s vehicle, is driving while awaiting contact with another subscribing TNC passenger, or something else?

Moreover, it has not yet been determined by the finder of fact if the TNC driver had his TNC app open and (a) had just dropped off a subscribing TNC passenger and was driving in the hope of securing another subscribing TNC passenger; or (b) had not yet secured a subscribing TNC passenger for the evening and was available on the app. The Complaint filed on behalf of the Liu family alleges that the TNC driver was operating his TNC application.<sup>13</sup> Whatever its meaning, there is no judicial determination to date of the actual events leading up to this incident.

The Commission follows the Legislature’s direction and defines “providing TNC services” as follows:

“Transportation network company services” refers to the period of time that commences when a participating driver in a transportation network company logs onto the transportation network company’s online-enabled application or platform and ceases when the participating driver logs off

---

<sup>11</sup> *Ang Liu, et al. v. Uber Technologies, Inc., Rasier LLC, Rasier-CA LLC, and Syed Muzzafar*, Case No. CGC 14-536979, filed January 24, 2014, in the Superior Court of the State of California in and for the County of San Francisco.

<sup>12</sup> *Andrew, Statement on New Year’s Eve Accident, January 1, 2014*, <http://blog.uber.com/2014/01/01/statement-on-new-years-eve-accident>.

<sup>13</sup> *Liu Complaint* at 5, ¶25.

the transportation network company's online-enabled application or platform. Transportation network company services have two distinct time periods, as follows:

- (1) Period One runs from the time a participating driver logs onto the transportation network company's online-enabled application or platform until the driver accepts a request to transport a passenger.
- (2) Period Two runs from the time a participating driver accepts a ride request on the transportation network company's online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the passenger safely exits the vehicle, whichever is later.

We adhere to the Legislature's edict and clarify that providing TNC services has two distinct time periods for which this Commission must regulate and insure that there are sufficient coverage protections for the TNC, the TNC driver, the TNC passengers, pedestrians, and other persons and vehicles that may be involved in a TNC-related incident.

Providing TNC services is not limited to the time between obtaining a recorded acceptance to transport a subscribing TNC passenger or the TNC operator's travel to pick up that subscribing TNC passenger, transport, or drop-off of that subscribing TNC passenger(s) to his/her/their destination. This definition covers all of the following circumstances:

- when the TNC driver has logged on to the transportation network company's online-enabled application or platform and is driving and/or waiting to be hired by a subscribing TNC passenger;
- when the TNC driver has accepted a subscribing TNC passenger and is on route to pick up the subscribing TNC passenger;

- when the TNC driver is transporting the subscribing TNC passenger from the pick-up spot to the destination stop and the passenger has safely exited the vehicle; and
- when the TNC driver is then again driving and/ or waiting to be hired by a subscribing TNC passenger and has logged on to the transportation network company's online-enabled application or platform.

It is our intent that the liability insurance policy that each TNC procures for Period One and Period Two must provide coverage consistent with our definition of "providing TNC services" and during those times that those services are being provided.

Some of the TNCs have recently attempted to provide additional coverage due to the uncertainty over the meaning of "providing TNC services" and the potential resulting gap in available insurance. For example, one TNC has stated that if the TNC driver is logged into or onto the TNC's network and is waiting to accept a ride from a subscribing TNC passenger, the TNC will provide "coverage up to \$50,000 for bodily injury to an individual, \$100,000 for bodily injury to all individuals, and \$15,000 for property damage."<sup>14</sup> While we appreciate the effort to craft market-based solutions, not all of the TNCs who have filed permit applications with the Commission have voluntarily proposed solutions to close the acknowledged insurance gap. Thus, it is incumbent on the Commission to fashion a remedy that is consistent with the Legislature's directive and will apply on an industry-wide basis.<sup>15</sup>

---

<sup>14</sup> Carolyn Said, *Uber boosts insurance coverage for drivers*, San Francisco Chronicle, March 14, 2014, C-1; Carolyn Said, *Lyft expands insurance coverage*, SFGate, March 13, 2014, <http://blog.sfgate.com/techchron/2014/03/13/lyft-expands-insurance-coverage>.

<sup>15</sup> Some parties have argued that the Commission should wait for the insurance industry to craft market-based solutions. The Commission, of course, has the ability to modify its decisions at a later time once those market-based solutions have been crafted.

**2.2.1 Providing TNC Service is a Business Enterprise that is not Covered by Current Forms of Personal Automobile Coverage**

With this decision, we clarify that:

Notwithstanding the coverage options described for Period One and Period Two, the vehicle used by a participating driver in transportation network company services shall be considered a public or livery conveyance and shall be considered as providing delivery of persons or passengers for compensation or a fee. Unless coverage for transportation network services is separately and specifically stated in an insurance policy and priced pursuant to approval by the Department of Insurance, a participating driver's personal automobile insurance policy shall not provide coverage for transportation network company services, and the insurer under that policy shall have no duty to defend and/or indemnify for claims resulting from provision of those services.

Through the use of the terms "public or livery conveyance," we mean "the holding out of the vehicle to the general public for carrying passengers for hire."<sup>16</sup> The TNC driver's application being open and available to accept subscribing TNC passengers, or indicate the estimated waiting time for an available TNC driver, is consistent with acts of "holding out of the vehicle as available to the general public for carrying passengers for hire." Thus, providing TNC services under D.13-09-045 includes acts of "holding out" available services such as, but not limited to, the application broadcasting the TNC driver's availability.

This distinction is an important one as it underscores the unavailability of current forms of personal automobile coverage to cover claims arising out of providing TNC services. There has been some uncertainty as to whether a TNC

---

<sup>16</sup> *Allstate Insurance Company v. Normandie Club* (1963) 221 Cal.App.2d 103, 106.

driver's personal automobile insurance would apply in the event a TNC driver is involved in an incident while providing TNC services. On the one hand, we stated in OP 6 of D.13-09-045 that the TNC's commercial liability insurance policy of at least \$1,000,000 (one million dollars) shall be available to cover claims "regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim."<sup>17</sup> That statement could be incorrectly interpreted to mean that a TNC driver's personal auto insurance may apply to an incident arising out of the TNC driver providing TNC services.

As we discussed in D.13-09-045,<sup>18</sup> the PIFC, which represents six of the largest insurance companies<sup>19</sup> in the United States, filed comments in this proceeding and explained why personal liability automobile coverage would not provide coverage in the event of an incident involving a TNC driver:

It appears that the industry standard for personal auto insurance ... is to exempt for insurance coverage claims involving vehicles used for transporting passengers for a charge. Thus, in situations where a vehicle is insured as a private vehicle and is used to transport passengers for a fee, no insurance coverage would exist. The issue before the CPUC is not ridesharing, but instead using a private passenger vehicle in a livery service. This is clearly not covered under a standard policy; if an accident occurs, coverage would not exist.<sup>20</sup>

We are left, then, with the probability that subscribing TNC passengers will be riding with TNC drivers that carry personal automobile insurance coverage that

---

<sup>17</sup> D.13-09-045 at 73, OP 6.

<sup>18</sup> *Id.*, at 57-58.

<sup>19</sup> State Farm Insurance, Farmers Insurance, Liberty Mutual Group, Progressive Insurance, Allstate Insurance, and Mercury Insurance.

<sup>20</sup> PIFC's Comments at 1-2, filed January 28, 2013.

is inapplicable where the TNC driver's personal automobile coverage carries the livery exclusion that PIFC described.

PIFC's statement is confirmed by the leading industry drafter of insurance forms – Insurance Services Office (ISO). According to the 1998 ISO Personal Auto Policy, there is no coverage for an insured's ownership or operation of a vehicle while it is being used as a "public or livery conveyance," except that the exclusion does not apply to a share-the-expense car pool. The expressed intent of the policy drafters (via 1989 ISO insurance department filing memorandum) is that this exclusion is designed to preclude coverage for vehicles indiscriminately available for hire to the general public for the transportation of people or cargo (*e.g.*, taxis, sight-seeing vans, package delivery services, *etc.*).

We believe that PIFC has raised a legitimate concern regarding the availability of a TNC's driver's personal automobile insurance to an incident arising out of providing TNC services. The livery exclusion is part of the standard list of exclusions in a personal automobile policy and states as follows:

We do not provide Liability Coverage for any insured for the insured's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.<sup>21</sup>

California construed this exclusion in *Allstate Insurance Company v. Normandie Club* (1963) 221 Cal.App.2d 103. The Court affirmed the trial court's jury instruction that "public" may "refer to a group of persons, although small in number."<sup>22</sup> The terms "public conveyance" and "livery" mean "the holding out of the vehicle to the general public for carrying passengers for hire."<sup>23</sup> Finally,

---

<sup>21</sup> Form PP 00 01 01 05. ISO Properties, Inc., 2003.

<sup>22</sup> 221 Cal.App.2d, at 106.

<sup>23</sup> *Id.*

the Court stressed that a critical factor for determining the exclusion's applicability is whether the vehicle's passengers were selected by "some predetermined standard."<sup>24</sup> The livery exclusion has been upheld by California and other courts as unambiguous and has been applied in a number of scenarios.<sup>25</sup>

We are also not persuaded by Lyft's argument, or the authorities on which it relies, that the livery exclusion is narrowly construed and may not apply to the TNC driver scenarios for which insurance is being required. Neither Farmers nor Truck dealt with the situation before the Commission wherein TNC drivers are driving on public roads with their apps on in anticipation of being hired to transport a subscribing TNC passenger. And *American Motorists* makes it clear that coverage will not apply when the covered vehicle is being used outside of the protected scope of the policy. We do not find that any of these decisions give us the comfort, as Lyft suggests, that the public conveyance or livery exclusion would be employed in such a narrow manner by the courts to have no impact on the TNC driver's coverage protection – and therefore the protection of others, including pedestrians -- if involved in an incident while providing TNC services. Based on the *Allstate* Court's reasoning and the comments of PIFC, we believe that insurance companies operating in California may invoke the livery exclusion to deny the applicability of a TNC driver's personal automobile coverage in the event the TNC driver, while providing TNC services, is involved in a motor vehicle collision or incident. TNC services are available to the public, and the passengers here are selected from a predetermined standard (*i.e.* those

---

<sup>24</sup> *Id.*, at 107.

<sup>25</sup> See "Construction and effect of exclusionary clause in automobile liability policy making policy inapplicable while vehicle is used as a public or livery conveyance." 30 A.L.R. 273.

passengers who have signed up for the TNC's application). Thus, a TNC driver providing TNC services likely falls within the scope of the livery exclusion.

In the event of a motor vehicle collision or incident where the TNC driver is providing TNC services, the riding public should look to the TNC's liability insurance company for coverage. Accordingly, we modify the insurance coverage requirement in OP 6 of D.13-09-045 so it is consistent with this decision and the Legislature's directive.

It is also our intent to clarify that the liability insurance shall be available if the injured party has a claim and/or brings suit against the TNC driver or the TNC with whom the TNC driver is associated. Thus, the TNC must be a named insured on the liability policy. We make this clarification so that there is no ambiguity that the liability insurance is intended to cover the TNC driver regardless of his or her classification as an employee, agent, or independent contractor.

Additionally, Pub. Util. Code § 5392 proscribes various methods for satisfying liability-protection requirements. Pursuant to D.92-09-053 and the authorities cited therein, the requisite insurance policies must be issued by a company licensed to write insurance in this state, or by non-admitted insurers pursuant to Insurance Code § 1763.<sup>26</sup>

---

<sup>26</sup> *In the Matter of the Application of Yellow Cab Cooperative, Inc., for Approval of Securities or Agreements of Indemnity for Adequate Protection Against Liability Pursuant to General Order No. 115-D(5)*, 1992 Cal. PUC LEXIS 703; 45 CPUC2d 452.

**3. AB 2293's Insurance Requirements for TNCs Differ from the Insurance Requirements Mandated for Charter Party Carriers (TCPs) and Passenger Stage Corporations (PSCs)**

**3.1. The Insurance Requirements for TCPs and PSCs**

Pub. Util. Code § 5391 states that TCPs shall carry insurance in an amount not less than the insurance required for PSCs:

The commission shall, in granting permits or a certificate pursuant to this chapter, require the charter-party carrier of passengers to procure, and to continue in effect during the life of the permit or certificate, adequate protection against liability imposed by law upon the charter-party carrier of passengers for the payment of damages for personal bodily injuries, including death resulting therefrom, protection against a total liability of the charter-party carrier of passengers on account of bodily injuries to, or death of, more than one person as a result of any one accident, and protection against damage or destruction of property. *The minimum requirements for such assurances of protection against liability shall not be less than the requirements which are applicable to operations conducted under certificates of public convenience and necessity issued pursuant to the provisions of Article 2 (commencing with Section 1031), Chapter 5, Part 1, Division 1, of this code, and the rules and regulations prescribed pursuant thereto shall apply to charter-party carriers of passengers.*<sup>27</sup>

Thus, § 5391 sets the minimum amount for liability limits for the TCP corporation.

But the reference to Article 2, Chapter 5, Division I, leads us to the provisions regulating PSCs, commencing at Pub. Util. Code § 1031. Pub. Util. Code § 1040 sets the liability limit maximum for PSCs carrying not more than eight passengers at \$750,000:

---

<sup>27</sup> Italics added.

The commission shall, in issuing a certificate pursuant to this article, require the passenger stage corporation to procure, and to continue in effect during the life of the certificate, adequate protection against liability imposed by law upon the corporation for the payment of damages for personal bodily injuries, including death resulting therefrom, protection against a total liability of the corporation on account of bodily injuries to, or death of, more than one person as a result of any one accident, and protection against damage or destruction of property.

The minimum requirements for these assurances of protection against liability shall not be less than the requirements which are applicable to operations of carriers conducted pursuant to the federal Bus Regulatory Reform Act of 1982 (P.L. 97-261), as amended. *However, for vehicles designed to carry not more than eight persons, including the driver, the commission shall not require protection against a total liability of the corporation on account of bodily injuries to, or death of, more than one person as a result of any one accident in an amount exceeding seven hundred fifty thousand dollars (\$750,000).*

In response, the Commission adopted GO 101(e) in 1985 which set \$750,000 as the minimum insurance for PSCs carrying seven passengers or less for judgments against the corporation.

When read together, GO 101(e) and Pub. Util. Code §§ 5391 and 1040 require liability insurance for TCPs in the maximum amount of \$750,000 for vehicles designed to carry no more than eight persons, including the driver. Thus, as TNCs are TCPs, the liability coverage limits for Period One and Period Two appears to be no less than, and no greater than, \$750,000. Any proposed

minimum insurance requirement for TNCs must, necessarily, be consistent with GO 101(e), and comply with Pub. Util. Code §§ 5391 and 1040.<sup>28</sup>

But the Legislature has elected not to impose the \$750,000 requirement for TNC for either Period One or Period Two. Instead, TNCs are required to maintain liability insurance policies with the following amounts:

- (1) Period One: the TNC insurance shall be primary and in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. The TNC shall also maintain two hundred thousand dollars (\$200,000) in excess coverage insuring the TNC and the driver that will apply on a per occurrence basis to cover any liability arising from a participating driver using a vehicle in connection with a TNC's online-enabled application or platform.
- (2) Period Two: the TNC insurance shall be primary and in the amount of one million dollars (\$1,000,000) per incident for death, personal injury, and property damage. TNCs shall also maintain uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) per incident that shall apply from the moment a passenger enters the vehicle of a participating driver until the passenger safely exits the vehicle. The uninsured motorist coverage and underinsured motorist coverage may also apply during any other part of Period Two if requested by the participating driver.

---

<sup>28</sup> We also note that Pub. Util. Code § 1040 requires that the minimum liability insurance requirements shall not be less than the requirements set forth in the federal Bus Regulatory Reform Act of 1982, 49 U.S. Code § 31131, *et seq.* Since 1985, the minimum insurance requirement has been set at \$1,500,000 for carriers operating vehicles with a seating capacity of 15 or fewer. (49 CFR 387.33.) Given this apparent inconsistency between the Pub. Util. Code and the Bus Regulatory Reform Act, we will leave it to the Legislature to determine if amendments to Pub. Util. Code §§ 5391 and 1040 are necessary.

It will be necessary, then, for this Commission to explain how it has the authority to require insurance amounts for TNCs that differ from the present statutory scheme.

**3.2. The Commission has the Authority to Impose Insurance Requirements for TNCs that Differ from the Insurance Requirements for TCPs and PSCs**

**3.2.1. Commission Law and the Public Utilities Code**

In D.13-09-045, the Commission cited to Decision (D.) 97-07-063 as one of the legal bases that gave the Commission the authority to adopt rules for new modes of transportation by vehicles that are either TCPs or PSCs.<sup>29</sup> The language in D.97-07-063 is instructive. It sets forth the legal framework for the Commission's ability to fashion new insurance requirements for TNCs which are, in fact, a subset of TCPs. In D.97-07-063, this Commission was faced with the prospect of adopting rules "for a new market niche form of passenger stage corporation (PSC) that specializes in the common carriage of infants and children, and parents, guardians and child-care providers accompanying the children."<sup>30</sup> While this was a new industry, it was nevertheless a PSC subject to the Commission's jurisdiction, and was "subject to any rate, route, insurance, financial reporting, and tariff requirements as the Commission may impose on this class of public utility for the protection and information of the citizens of this state and the users of the PSC's proposed services."<sup>31</sup> In recognition of this broad

---

<sup>29</sup> D.13-09-045, at 24, fn. 37.

<sup>30</sup> D.97-07-063, at 1.

<sup>31</sup> *Id.*, at 7.

authority, the Commission adopted rules for infant and children common carriers, which were set forth in the appendix to the decision.

D.97-07-063 also stated that the “Commission may do whatever is necessary and convenient in its regulation of public utilities and may attach terms and conditions to the right granted a PSC that, in the Commission’s judgment, the public convenience and necessity require.”<sup>32</sup> In reaching this conclusion, the Commission cited to Pub. Util. Code §§ 701<sup>33</sup> and 1032, two statutory provisions that give the Commission expansive authority. Since D.97-07-063 dealt with PSCs, it was not necessary for the Commission to cite to the statute that gives it equally broad powers to regulate TCPs – Pub. Util. Code § 5381, which states: “To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” Accordingly, as the Commission is able to exercise its broad authority to create new regulations for TNCs, a sub set of TCPs, the Commission also has broad authority to adopt new insurance requirements specifically tailored for the TNC industry.

### **3.2.2. Legislative Authority**

In addition to case law and the provisions of the Publ. Util. Code, the Legislature has also deemed it appropriate to vest the Commission with the authority to impose insurance requirements for TNCs that differ from those for

---

<sup>32</sup> Id., at 10.

<sup>33</sup> Pub. Util. Code § 701 states “The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”

TCPs, as long as the new requirements are consistent with AB 2293's expressed intent. First, the legislative findings section of AB 2293 states that the "Legislature does not intend, and nothing in this article shall be construed, to prohibit the commission from exercising its rulemaking authority in a manner consistent with this article, or to prohibit enforcement activities related to transportation network companies."<sup>34</sup> Second, AB 2293 states : "Notwithstanding any other provision of this chapter, this article shall apply to transportation network companies."<sup>35</sup> The only manner that the Commission could act regarding the insurance requirements in a manner consistent with AB 2293 would be for the Commission to impose the insurance requirements contained therein, rather than the requirements set forth in Pub. Util. Code §§ 1031, 1040, and 5391.

Moreover, AB 2293 also acknowledges that the "commission has initiated regulation of transportation network companies as a new category of charter-party carriers and continues to develop appropriate regulations for this new service."<sup>36</sup> When this recognition is read together with the foregoing legislative finding, it seems reasonable that the Commission not delay adopting and enforcing the same insurance requirements until AB 2293 goes into effect on July 1, 2015. Failure to do so could potentially create a gap in the implementation and enforcement of AB 2293's insurance requirements, a result that would not promote public safety.

Conforming the Commission's actions with AB 2293's new insurance requirements is also in accordance with the manner in which the Commission

---

<sup>34</sup> Appendix A, § 5441.

<sup>35</sup> *Id.*, § 5430.

<sup>36</sup> *Id.*, § 5440(a).

derives its authority from the Legislature. The Commission derives its powers from Article XII of the California Constitution and from statutory grants from the Legislature. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 634.) Section 5 of Article XII states that the “Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission[.]” The phrase “consistent with this article” has been construed by the courts to mean that the Commission’s powers must be “cognate and germane to the regulation of public utilities[.]” (*Southern California Gas Company v. Public Utilities Commission* (1979 ) 24 Cal.3d 653, 656-657; *People v. Western, supra*, 42 Cal.2d, at 634.) Thus, the Commission has a duty to adopt and enforce insurance requirements that differ from those contained in Pub. Util. Code §§ 1031, 1040, and 5391 as long as those new insurance requirements have been mandated by the Legislature, whose directive the Commission is duly bound to follow.

#### **4. The Importance of Making TNCs Purchase Primary Liability Insurance Coverage for Period One and Period Two**

There has been considerable debate in this proceeding about whether the coverage for Period One should be primary or excess. One of the arguments advanced for requiring the TNC’s Period One insurance to be excess is because a TNC driver could have multiple online-enabled applications or platforms open while waiting to get matched, making it impossible to require exclusive and primary insurance and the sole duty to defend for insurance purposes.<sup>37</sup>

AB 2293 resolves this dispute and requires the insurance for Period One to have

---

<sup>37</sup> See, e.g. Comments from California Insurance Commissioner Dave Jones dated April 7, 2014; and Kate Sampson, Managing Director, Marsh Risk & Insurance Services, Inc. dated April 22, 2014.

both primary and excess layers of coverage.<sup>38</sup> AB 2293's primary and excess insurance requirements are consistent with the law already in existence to deal with the prospect of multiple primary policies being responsible for damages caused by the same incident. If there is an incident and there are multiple policies that potentially cover the incident, courts will look at the policies' Other Insurance clauses to determine which carrier must provide the coverage, or to determine what portion of the claim each carrier is responsible for. Other Insurance clauses can be one of the following types:

- Pro-rata: limits the insurer's responsibility to the insured is pro-rated based on the insurer's respective limits;
- Excess: insurer's policy is excess to any other existing, available, or valid and collectible insurance; or
- Escape: the insurer seeks to avoid all liability where there is other valid and collectible insurance.

Some examples of excess Other Insurance clauses are as follows:

- This insurance is excess over other existing insurance if any, whether such other insurance be primary, excess, contingent or on any other basis, that is liability insurance such as, but not limited to comprehensive personal liability, comprehensive general liability coverages or similar coverage for liability arising out of the activities of any insured.
- The insurance afforded under this policy shall apply as excess insurance, not contributory, to other collectible insurance (other than insurance applying as excess to the Company's limit of liability hereunder) available to the

---

<sup>38</sup> Appendix A, § 5433(a) (1) requires primary coverage in the amount of \$50,000 for death and personal injury per person, \$100,000 for death and personal injury per incident, and \$30,000 for property damage. 5433(a) (2) requires excess coverage of \$200,000 per occurrence.

insured and covering loss against which insurance is afforded hereunder.<sup>39</sup>

While there has been a great deal of scholarly discussion and litigation over the meaning and enforcement of these Other Insurance clauses, the court's guiding focus (and thus insurance coverage experts' focus) has been to interpret and enforce the clauses so that the insured is not deprived of the bargained-for insurance protection. The California Supreme Court made that clear in *Fageol Truck & Coach Company v. Pacific Indemnity* (1941) 18 Cal.2d 731, 747:

If to give the quoted clause the meaning contended for would release Detroit from liability, then it must be construed so as to permit recovery since it is 'susceptible of such construction.' Where two interpretations equally fair may be made, that which affords the greatest measure of protection to the assured will prevail.

The Court's ruling is consistent with one of California's rules for the construction of insurance contracts, namely that "'insurance coverage is interpreted broadly so as to afford the greatest possible protection to the insured.'" (*MacKinnon v. Truck Insurance Exchange* (2003) 31 Cal.4th 635, 648, quoting *White v. Western Title Insurance Company* (1985) 40 Cal.3d 870, 881.) As a result, it is not uncommon that multiple policies would cover the same event and the various carriers would pay for the defense and indemnity based on a percentage formula. These agreements are often worked out between the carriers without litigation.

---

<sup>39</sup> These types of clauses are cited and discussed in "Issues and Problems in Other Insurance, Multiple Insurance, and Self-Insurance." *Pepperdine Law Review* Volume 22, Issue 4 (5-15-1995); *Donahue Construction Company v. Transport Indemnity Company* (1970) 7 Cal.App.3d 291; *Firemen's Fund Insurance Company v. Continental Casualty Company* (1959) 170 Cal.App.2d 698; Annot. (1982) 12 A.L.R. 4<sup>th</sup> 993; and Annot. (1961) 76 A.L.R. 2d 502.

For example, if more than one policy has the same excess Other Insurance clause, a court can declare that the clauses are mutually repugnant. (*CSE Insurance Group v. Northbrook Property and Casualty Company*, 23 Cal.App.4th 1839, 1844 ["In effect, each insurer here asks us to implement the language in its policy and ignore the language in the other policy. This we cannot do, for the two provisions are mutually repugnant."]) The Court in *CSE*, at 1844-1845, reasoned that the two Other Insurance clauses cancel each other out, and the policies must share in the defense of the insured on a co-primary basis, and defense fees and costs may be shared on a pro-rata basis:

It must be remembered that "[t]he reciprocal rights and duties of several insurers who have covered the same event do not arise out of contract, for their agreements are not with each other.... Their respective obligations flow from equitable principles designed to accomplish ultimate justice in the bearing of a specific burden." (*American Automobile Ins. Co. v. Seaboard Surety Co.* (1957) 155 Cal. App. 2d 192, 195-196 [318 P.2d 84].) Guided by statute, precedent, and public policy, we conclude the two policies must contribute pro rata[.]

Some courts have even given the insured the right to make an election amongst multiple primary insurers, and the insurer that pays for the defense can bring a contribution action against the other primary insurers in a separate motion for declaratory relief. (See *Armstrong World Industries, Inc. v. Aetna Casualty & Surety Company, et al.* (1996) 45 Cal.App.4th 1.) And if there are different Other Insurance clauses (*e.g.* pro rata versus excess; pro rata versus escape; or excess versus escape), there is a wealth of California case law on how the courts have reconciled these clauses so that there is coverage for the loss. Regardless of the scenario then, the insured is protected. Again, because of the fairly well established law in this area, agreements between carriers are often worked out without litigation.

The solution, then, and as our Legislature has rightly determined, is to require TNCs to procure primary liability coverage for Period One and Period Two in the amounts recited in AB 2293. So if a TNC driver has more than one app open during Period One and gets into an incident, each TNC corresponding to the open app is equally responsible for the bodily injury and property damage claims arising from the TNC-related incident, and each open app's insurer must pay for the defense, settlement, and ultimate liability of the insured on a percentage basis pursuant to the case law partially described above. An insurer can always file a complaint for declaratory relief in superior court for equitable contribution to the financial responsibility if the insurer believes it has paid more than its fair share, but was unable to reach an agreement with the other carrier(s). In *Scottsdale Insurance Company v. Century Surety Company* (2010) 182 Cal.App.4th 1023, 1031, the Court explained the purpose of equitable contribution:

In the insurance context, the right to contribution arises when several insurers are obligated to indemnify or defend the same loss or claim, and one insurer has paid more than its share of the loss or defended the action without any participation by the others. Where multiple insurance carriers insure the same insured and cover the same risk, each insurer has independent standing to assert a cause of action against its coinsurers for equitable contribution when it has undertaken the defense or indemnification of the common insured. Equitable contribution permits reimbursement to the insurer that paid on the loss for the excess it paid over its proportionate share of the obligation, on the theory that the debt it paid was equally and concurrently owed by the other insurers and should be shared by them pro rata in proportion to their respective coverage of the risk. The purpose of this rule of equity is to accomplish substantial justice by equalizing the common burden shared by coinsurers, and to prevent one insurer from profiting at the expense of others.

The bottom line is that the insured and injured parties are protected by the availability of TNC insurance.

**5. The Importance of Also Requiring Excess Insurance for Period One**

The manner in which TNC applications operate during Period One encourages distracted driving and therefore mandates that additional protection in the form of excess insurance be required. This is a time when a TNC driver may be signed into multiple TNC applications or platforms. When and whether the driver is a TNC driver is informed by the publically available TNC application or platform. TNC applications show nearby TNC cars available for hire, the minutes from the requesting party's location, and available vehicles' movements along nearby streets. The TNC application shows that many TNC drivers are not in stationary positions (*e.g.* sitting in coffee shops, parked, or otherwise outside of their vehicles); indeed, the app's power comes from the dynamic real-time tracking of TNC vehicles available for hire and their proximity from the subscriber. The TNC application shows many available TNC drivers in motion, hoping to be in the most advantageous position to secure a requested fare.<sup>40</sup> By contrast, in Period Two, the TNC driver is focused on picking up the passenger and taking the passenger to the desired destination. Period One requires concentration on driving and on interaction with the TNC application while driving, whereas Period Two requires driving to a specific location and inter-action with the in-vehicle subscriber.

---

<sup>40</sup> Given our requirement that TNC service during Period One requires being signed on to at least one TNC application and that the driver be operating a motor vehicles, if the TNC driver was, in fact, sitting in a coffee shop or at home, no TNC service was being provided and no insurance requirement would attach.

The concern about the dangers of distracted driving have been confirmed by the U.S. Department of Transportation (DOT), National Highway Traffic Safety Administration, in its September 2010 study on distracted driving (*i.e.* the act of driving while engaged in other activities such as texting, reaching for a device other than a cell phone, texting, talking on a cell phone, *etc*).<sup>41</sup> In 2009, 448,000 people were injured in motor vehicle crashes that were reported to have involved some form of distracted driving, and 5,474 people were killed. In a more recent study, the DOT estimated that reaching for a cell phone distracts a driver for 4.6 seconds, and that reaching for something inside a vehicle increases the risk of accident by 9 times. Even more dangerous is texting while driving, which increases the risk of an auto accident by 23 times.<sup>42</sup> If TNC drivers have to take their eyes off the road while driving to interact with TNC applications in order to accept a fare, it stands to reason that TNC drivers are also driving while distracted. The chances of having an accident thereby increase.

This is why California has passed legislation to punish driving distracted with electronic devices. For example, Vehicle Code §§ 23123 and 23123.5 state, respectively:

A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.

---

<sup>41</sup> The definition comes from Overview of the National Highway Traffic Safety Administration's Driver Distraction Program (DOT HS 811 299). To the extent necessary, we take judicial notice of this and other DOT documents mentioned herein.

<sup>42</sup> Distracted Driving: What You Need to Know. ([www.fmcsa.dot.gov/rules-regulations/topics/distracted-driving/overview.aspx](http://www.fmcsa.dot.gov/rules-regulations/topics/distracted-driving/overview.aspx)) DOT.

A person shall not drive a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication, unless the electronic wireless communications device is specifically designed and configured to allow voice-operated and hands-free operation to dictate, send, or listen to a text-based communication, and it is used in that manner while driving.

As the manner in which the TNC application or platform is engaged by TNC drivers during Period One increases the risk of accidents and liability, common sense dictates that TNCs be required to carry an additional \$200,000 in excess liability coverage.

Before leaving this discussion, we must acknowledge the issue of “stacking.” If a TNC driver is operating a vehicle with more than one online-enabled application or platform engaged and there is an incident, multiple excess policies might otherwise be stacked for purposes of recovery.

The right to stack policy limits will, ultimately, be driven by the terms of the insurance contract at issue. In *State of California v. Continental Insurance Company* (2012) 55 Ca. 4<sup>th</sup> 186, the Court was faced with the scenario that the “long-tail injury” (i.e., indivisible injuries attributable to continuous events without a single unambiguous cause) could exceed the limits in one particular year, leaving the insured without the policy limits that had been triggered in another year for the same loss. As each insurance policy had a duty to pay “all sums” up to its respective policy limit, and since one policy was insufficient to cover the insured for the loss, each insurance policy that was triggered by the long-tail injury had a duty to pay its policy limits. The Court added an important caveat: “an insurer may avoid stacking by specifically including an ‘antistacking’

provision in its policy.”<sup>43</sup> Thus, if a TNC insurer wants to avoid its policy limits stacked onto another TNC insurer’s coverage should the driver have multiple TNC applications engaged at the time of a covered accident, the policy must so specifically state. The language of the contract should dictate if stacking will apply.

The problem of stacking is further complicated by the Period One limits of \$100,000 primary and \$200,000 excess coverages. These limits may be insufficient to cover the damages from a greater than serious vehicular incident. In May of 2014, the Department of Transportation (DOT) published a report entitled *The Economic and Societal Impact of Motor Vehicle Crashes, 2010*. It calculated the estimated average per-person economic costs (*i.e.* medical costs, market productivity costs, and household productivity costs) for injuries from automobile crashes. The total per-person costs, depending on the severity of the crash, are as follows: minor: \$7,600; moderate: \$76,039; serious (not life threatening): \$214,495; severe (life threatening, survival probable): \$416,232; critical (life threatening survival uncertain): \$900,866; and fatal (unsurvivable/untreatable): \$1,234,489. AB 2293’s primary and excess limits of \$100,000 and \$200,000, respectively, for Period One, would only be sufficient to handle claims if the injuries were from either a minor to a serious crash. In contrast, if a TNC driver had more than one online-enabled application or platform engaged and there was an incident resulting in critical injuries, multiple TNC policies could be stacked.

Injury costs related to a vehicular incident are not static. The DOT noted in its April 2014 report entitled *Examining the Appropriateness of the Current*

---

<sup>43</sup> Id., at 202.

*Financial Responsibility and Security Requirements for Motor Carriers, Brokers, and Freight Forwarders*, that “recent studies indicate that inflation has greatly increased medical claims costs and related expenses.” This report was issued in response to the July 6, 2012, law that President Obama signed entitled the *Moving Ahead for Progress in the 21<sup>st</sup> Century Act* (MAP-21; P.L. 112-141). The government’s action demonstrates that the costs numbers cited above for 2010 will have increased, likely making the limits of a single TNC policy inadequate for claims arising from many TNC-related incidents where multiple apps are implicated. Unless the TNC insurance policies contain an express exclusion against stacking, the possible multiple policy limits may remain available under existing court precedents

## **6. Additional Insurance Requirements**

### **6.1. Comments on the ACR**

California Airports Council supports additional insurance requirements at a level similar to other transportation services. The language should also require that airports be listed as additional insured’s to protect airport liability when TNCs are operating on airport property.

City and County of San Francisco (CCSF) argues that the new definition of the phrase “providing TNC services” should remain a part of the decision’s insurance requirement. CCSF believes that the phrase “used as a public livery or conveyance” would add further confusion to the question of when TNC insurance applies to incidents involving TNC vehicles and drivers. CCSF supports additional coverage with the caveat that the comprehensive and collision insurance be \$50,000 per person and \$100,000 per accident as recommended by the California Department of Insurance. Additionally, CCSF requests that TNC insurance be deemed primary, that the TNC insurance

policies be made available to the public, and ensure that personal insurance providers are advised of TNC activities of their insureds.

Dolan argues that instead of the phrase “used as a public or livery conveyance,” it should state “TNC vehicles providing TNC services” in order to provide consistency throughout the decision. Dolan also supports the additional coverages and limits.

Former mayor Willie L. Brown Jr. also supports additional insurance coverage requirements such as Uninsured Motorists Coverage, Comprehensive Coverage, Collision Coverage, and medical payments coverage as a safety measure.

GCLA believes additional insurance coverage requirements are fair and responsible. But GCLA suggests that the commercial coverage be primary, transparent to the public, and in force and effect 24 hours per day, 7 days per week. Finally only “A” rated and admitted carriers be allowed to insure TNCs.

Luxor argues for TNCs maintaining full-time primary commercial insurance on all vehicles registered with them for purposes of providing TNC services.

Lyft argues that the Commission need not revise the insurance requirements as there is no documented coverage gap. Lyft also questions the ACR’s concern over the possible presence of a public conveyance or livery exclusion in personal automobile policies. It first cites the settled rule that exclusions in insurance contracts will be narrowly against the insurer. (*White v. Western Title Insurance Company* (1985) 40 Cal. Ed 870, 881.) Next, Lyft cites a trio of California decisions for the proposition that the public conveyance or livery exclusion has been construed narrowly and only applies to activities after a ride request has been accepted. (*Farmers Insurance Exchange v. Knopp* (1996)

50 Cal.App.4th 1415, 1421 [accident involving charter party carrier company in which the driver was involved in an accident after he had dropped off his fare and was en route back to his employers place of business. The Court held the policy “does not cover an accident occurring during the return step”]; *Truck Insurance Exchange v. Torres* (1961) 193 Cal.App.2d 483, 495 [public conveyance or livery exclusion not applicable to instance where driver was in an accident two or three days after completion of his delivery and had stopped to visit his grandmother; and *American Motorists Insurance Company v. Moses* (1952) 111 Cal.App.2d 344, 349 [“Where the conveyance of passengers had assumed an important part of Moses’ business activity prior to the accident, and the carriage of merchandise had been relegated to a mere incidental part of this transportation of paying passengers, it must be held, in line with the determination of the trial court, that his expanded use was outside the protection afforded by the policy.”)] Lyft concludes that insurers would be unlikely to prevail if they were to invoke this exclusion to deny a TNC driver’s coverage under a personal automobile policy during periods when the driver “is in match mode.”

PIFC suggests that the TNC commercial liability be primary and clarify that the duty to defend rests with the TNC’s primary commercial liability policy.

SFCDA maintains that TNC drivers and vehicles should be required to obtain full-time commercial livery insurance policies. The coverage limits should be no less than what is required of taxicabs in a given jurisdiction.

SideCar disagrees that the proposed coverage limits are appropriate and, instead, recommends that the \$1,000,000 liability coverage only apply for the period where a ride has been accepted in the app until the ride ends and the passenger exits the vehicle. Contingent third party liability should be \$50,000

per individual bodily injury claim and \$1,000,000 per incident, and property damage up to \$25,000. Contingent collision coverage should be required in the amount of \$50,000.

Summons opposes any new insurance requirements until the insurance market offers financially viable products to meet those requirements.

United Taxicab Workers asserts having separate personal and TNC insurance policies provides an incentive for driver fraud that may be difficult to detect. Instead, TNC drivers must carry commercial livery insurance.

## **6.2. Discussion**

As we discussed, *supra*, in this second modification of D. 13-09-045, decision, and as we discuss in greater detail now, there is ample justification for expanding the insurance requirements for TNCs beyond simple liability coverage.

### **6.2.1. What is and is not covered by Commercial Liability Insurance**

Since the issuance of D.13-09-045, the Commission has considered various damage scenarios where a TNC's commercial insurance policies might not apply to cover all damages if there was an incident arising out of providing TNC services. To understand the significance of these considerations, it will be necessary to discuss the nature of liability insurance coverage. California Insurance Code § 108 defines liability insurance to include:

Insurance against loss resulting from liability for injury, fatal or nonfatal, suffered by any natural person, or resulting from liability for damage to property, or property interests of others but does not include worker's compensation, common carrier liability, boiler and machinery, or team and vehicle insurance.

In D.13-09-045, we used the phrase “commercial liability insurance” which is synonymous with the phrase “liability insurance” insofar as the expected intent of the coverage is for alleged tortious conduct. For example, commercial insurance policies can be of one of three forms: “(1) individual policies; (2) comprehensive general liability (CGL) policies; or (3) ‘package’ policies.”<sup>44</sup> As quoted below, a CGL policy typically includes an insuring agreement setting forth the promise to pay all sums in the defense and indemnification of the insured that the insured is obligated to pay:

**SECTION I – COVERAGES**  
**COVERAGE A BODILY INJURY AND PROPERTY**  
**DAMAGE LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies. We will have the right and duty to defend the insured against any ‘suit’ seeking those damages.<sup>45</sup>

Thus, the phrase “commercial liability insurance,” the CGL Insuring Agreement, and Insurance Code § 108, all envision a scenario where the insured is potentially liable to a third party for bodily injury or property damage, and the commercial liability insurer is under a duty to defend and indemnify the insured.

**6.2.2. TNCs must provide Uninsured/  
Underinsured Motor Vehicle  
Coverage**

There may be instances where a TNC driver is providing TNC services and is involved in a motor vehicle collision with a person driving either an uninsured

---

<sup>44</sup> *California Insurance Law & Practice*; Matthew Bender & Company (2013) §41.05 [2][a].

<sup>45</sup> Comprehensive General Liability Coverage Form, CG 00011204. ISO Properties, Inc. 2003.

or underinsured motor vehicle.<sup>46</sup> A TNC driver's passenger(s) should be covered for bodily injury or damages at least up to the limits specified herein while being picked up, transported, or dropped off. The TNC drivers who have sustained bodily injury or damage to their vehicles while providing TNC services, similarly, will want to be covered for their losses but may not be made whole due to nature of the other driver's uninsured or underinsured status.

There may also be instances where a TNC driver is providing TNC services with a subscribing TNC passenger in the vehicle, and the TNC driver's vehicle collides with another vehicle whose driver is uninsured/underinsured and where that other driver is wholly or partially at fault. Now both the TNC driver and their subscribing TNC passenger will be able to seek compensation from the at-fault driver but, again, might not be made whole due to the lack of insurance covering the other driver or vehicle or due to the policy limits of the other driver's insurance. If the TNC is only insuring the TNC driver with commercial liability insurance, there may not be insurance available for any of these scenarios.

We do not believe that the potential absence of coverage is consistent with California public policy. In enacting Insurance Code § 11580.2, the Legislature intended to further California's policy of providing compensation for injuries caused by uninsured and underinsured motorists. (*See Mercury Insurance Company v. Enterprise Rent-A-Car Company* (2000) 80 Cal.App.4th 41, 48-49 ("The

---

<sup>46</sup> Pursuant to Insurance Code § 11580.2(b), "uninsured motor vehicle" means "a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is the applicable insurance or bond but the company writing the insurance or bond denies coverage thereunder or refuses to admit coverage thereunder [.]". Pursuant to Insurance Code § 11580.2 (p)(2), "underinsured motor vehicle" means "a motor vehicle that is an insured motor vehicle but insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person."

objective of the [UM] statute is to provide protection to the insured from the injuries caused by the unsafe operation of uninsured motor vehicles[.]” quoting *Denny v. St. Paul Guardian Insurance Company* (1987) 196 Cal.App.3d 73, 77); and *Viking Insurance Company v. State Farm Mutual Automobile Insurance Company* (1993) 17 Cal.App.4th 540, 548 (“[T]he fundamental purpose of section 11580.2 is to provide the insured with the same insurance protections he would have enjoyed’ had the ‘tort feisor carried liability limits equal to [i]nsured’s underinsured motorist limits[.]” quoting *Rudd v. California Casualty General Insurance Company* (1990) 219 Cal.App.3d 948, 951).) Some TNCs have already included uninsured/underinsured coverage and we applaud those that have. This coverage, however, is not being offered on a consistent TNC industry-wide basis.

We believe it is appropriate, then, to require TNCs to provide uninsured/underinsured motor vehicle coverage in an amount equal to the liability coverage that covers all occupants of the TNC vehicle during the provision of TNC services.

With these changes, we intend for TNCs to purchase insurance to cover a wider range of scenarios beyond the realm of those covered by commercial liability insurance policies. Specifically, it is the Commission’s intent that with these additional coverage requirements, the TNC policies will:

- (a) provide coverage for the types of damage and at least in the amounts specified above to the TNC driver and their passengers who sustain bodily injury while providing TNC services where the TNC driver is not at fault or not entirely at fault and the party at fault has insufficient or no insurance coverage; and
- (b) provide coverage for the types of damage and at least in the amounts specified above to the TNC driver’s

passengers who sustain bodily injury while being picked up, transported, or dropped off while receiving TNC services where the TNC driver is at fault or partially at fault and the TNC driver or party at fault has insufficient or no insurance coverage.

**7. The Importance of the Requirement that Companies Providing TNC Insurance be Licensed to Write Such Insurance in the State of California, or Comply with Insurance Code § 1763.**

**7.1. Comments**

The Assigned Commissioner's Ruling (ACR) asked the parties to comment on the proposed requirement that companies providing TNC insurance be licensed to write such insurance in the State of California, and that if a non-admitted insurer was going to write the coverage, it had to comply with Insurance Code Section 1763. The language proposed was as follows:

In addition, these insurance policies must be issued by a company licensed to write insurance in this state, or by non-admitted insurers subject to Insurance Code Section 1763.

In response, not a single party opposed this requirement. Since AB 2293 does not address this proposed requirement, we do so here consistent with our earlier intention.

**7.2. Discussion**

We find that it is reasonable that these licensing requirements apply to companies that insure TNCs, especially when we consider the benefit these requirements have for both the insured and the third parties who seek to recover damages from the insured as a result of a TNC-related incident. In *Crusader Insurance Company v. Scottsdale Insurance Company* (1997) 54 Cal.App.4th 121, 135-136, the Court noted that in passing Section 1763, the Legislature was concerned about the danger faced by California consumers dealing with unstable and

underfunded nonadmitted insurers. Much of the legislative history deals with tales of carriers headquartered in the Caribbean or similar offshore locales, backed by unreliable assets such as bonds of dubious value issued by third world governments or enterprises of questionable stability.

In deference to the Legislature's concern, the Commission adopted a series of General Orders (GOs) to deal with the various transportation modes the Commission regulates, and they all include the above language, as well as additional alternative ways in which the insurance requirements may be satisfied. (*See, e.g.* GO 115-F [Charter-party carriers]; GO 101-E [passenger stage corporations]; GO111- C [vessel common carriers]; GO 120-C [commercial air operators and passenger air carriers]; and GO 121-A [for-hire vessel operators].) For example, the language from GO 115-F states:

(2) The protection herein required shall be provided in one of the following ways:

(a) By a certificate or certificates of public liability insurance and property damage insurance in a form approved by the Commission, issued by a company, or companies, licensed to write such insurance in the State of California, or by nonadmitted insurers subject to Section 1763 of the Insurance Code.

(b) By an original bond, or bonds, issued by a surety company, or companies, permitted to write surety bonds in the State of California.

(c) By a certificate of insurance issued by a special lines' surplus line broker licensed as such in this State.

(d) By any other plan of protection for the public approved as hereinafter required.

(e) By a plan of self-insurance approved as hereinafter required.

(f) By a combination of two or more of the foregoing methods.

From a public safety standpoint, it does not make sense to decline to extend this protection to persons involved in an incident arising from providing TNC services, especially when the Commission requires it for Charter-party carrier insurers.

A final consideration for using an admitted carrier is that claims are covered (with some limitations not relevant here) by the California Insurance Guarantee Association (CIGA) should that admitted carrier become insolvent. Insurance Code §§ 1063-1063.17 establishes a system for covering losses that would have been covered by a carrier should that carrier become insolvent, but only if that carrier was admitted to do businesses in California. In *R.J. Reynolds Company v. California Insurance Guarantee Association* (1991) 235 Cal.App.3d 595, 599-600, the Court of Appeal explained CIGA's value to both the insureds and the solvent insurers:

CIGA was created in 1969 as a compulsory association of state-regulated insurance companies. (*Central National Ins. Co. v. California Ins. Guarantee Assn.* (1985) 165 Cal. App. 3d 453, 458 [211 Cal.Rptr. 435]; §§ 1063.14; 1063, subd. (a).) Its purpose is "to provide insurance against loss arising from the failure of an insolvent insurer to discharge its obligations under its insurance policies." (*Middleton v. Imperial Ins. Co.* (1983) 34 [235 Cal. App. 3d 600] Cal. 3d 134, 137 [193 Cal.Rptr. 144, 666 P.2d 1].) CIGA assesses its members when another member becomes insolvent, thereby establishing a fund from which insureds whose insurers become insolvent can obtain financial and legal assistance. (*Isaacson v. California Ins. Guarantee Assn.* (1988) 44 Cal. 3d 775, 784 [244 Cal.Rptr. 655, 750 P.2d 297].) Member insurers then recoup assessments paid to CIGA by means of a surcharge on premiums to their policy holders. (§ 1063.14, subd. (a).) In this way the insolvency of one insurer does not impact a small segment of insurance consumers, but is spread throughout the insurance

consuming public, which in effect subsidizes CIGA's continued operation.

The value of CIGA can be seen in the number of claims that it has paid. By way of example, for the 2011 fiscal year, CIGA paid in excess of \$234 million in claims arising from insolvent Member Insurers.<sup>47</sup> Given CIGA's unquestioned value in providing financial protection and peace of mind in the event an insurer becomes insolvent, we conclude that such benefits should be available to TNCs, their drivers, their passengers, pedestrians, and the wider public.

**8. Applying AB 2293's Modified Insurance Requirements to Uber Technologies, Inc. (Uber)**

**8.1. Comments the ACR**

The California Airports Council supports applying the proposed modifications to Uber.

Dolan supports applying the insurance modifications to Uber but also wants the modifications to apply to Raiser-Ca. LLC. Finding of Fact ¶ 26, Dolan argues, should also be changed, with the phrase "while they are providing Uber services" added at the end following the phrase "incidents involving vehicles and drivers." Dolan believes the same change should be made at Finding of Fact 13. Finally, Dolan suggests that the commercial liability coverage be a primary "nonwasting policy" so that defense fees and costs do not eat away at the policy limits.

SFCDA agrees that these modified insurance requirements should apply to Uber.

---

<sup>47</sup> ([www.caiga.org/about\\_ciga.html](http://www.caiga.org/about_ciga.html).)

Uber disagrees, reasoning that as the TNC insurance requirements already apply to Uber's TNC subsidiary, Rasier-CA LLC, there is no need to apply them to Rasier's parent entity, Uber. Uber also believes the question is premature as the Commission deferred issues regarding whether Uber should be regulated as a TCP to Phase 2.

United Taxicab Workers argues that Uber should be required to carry commercial livery insurance on all its vehicles.

## **8.2. Discussion**

There is no reason why the Commission needs to make any findings distinguishing between Uber and UberX now. Uber's corporate makeup has always been a question of interest to the Commission and to the parties, and is something that the Commission intends to explore in Phase II of this proceeding.

The modified insurance requirements mandated by AB 2293 and adopted by this decision shall also apply to Uber. The Commission has given Uber permission to conduct business in California under certain conditions, one of which was that Uber "shall also provide to the Commission a copy of the insurance policy evidencing \$5,000,000 of excess Public Liability and Property Damage Insurance applicable to the provision of transportation services by third parties."<sup>48</sup> Uber was also required to keep the required insurance active and in effect, and the proof of insurance "must be on file with the Commission while Uber is conducting its business in California."<sup>49</sup> As Uber is already subject to the

---

<sup>48</sup> TPAC, TransForm, CforAT, GCLA, Luxor Cab, IATR, PIFC, the San Francisco Cab Drivers Association, the San Francisco Limo Union, the San Francisco Medallion Association, SFMTA, The San Francisco Airport Commission, SideCar, Tickengo, Uber, The United Taxicab Workers, TURN, and Lyft.

<sup>49</sup> TPAC, TransForm, CforAT, GCLA, Luxor Cab, IATR, PIFC, the San Francisco Cab Drivers Association, the San Francisco Limo Union, the San Francisco Medallion Association, SFMTA,

Commission's insurance requirements so that it may operate its business in California, we see no reason not to make AB 2293's modified insurance requirements applicable to Uber. In Phase II, Uber will be allowed to argue why it believes AB 2293's modified insurance requirements should only apply to its subsidiary Rasier (UberX).

**9. All *Ex Parte* Communications Must be Reported in this Quasi-Legislative Proceeding.**

The above-mentioned ACR also asked for comments on a proposal to treat all communications regarding this proceeding with Commission Decision-makers subject to the reporting requirements of our *Ex Parte* communication rules (Rule 8.4).

**9.1. Comments on ACR**

California Airports Council supports making Rule 8.4 applicable to this proceeding.

City and County of San Francisco supports reporting of *ex parte* communications in this proceeding.

Lyft sees no reason for the Commission to depart from its *ex parte* rules.

SFCDA supports requiring the reporting of *ex parte* communications.

SideCar opposes the reporting requirements as they will stifle and hinder the free and abundant communication between Commission staff and the TNC industry

Summons supports having the reporting requirements cover meeting minutes of the Insurance Working Group.

---

The San Francisco Airport Commission, SideCar, Tickengo, Uber, The United Taxicab Workers, TURN, and Lyft.

TPAC supports making the *ex parte* reporting rules applicable to this proceeding.

United Taxicab Workers argues that all *ex parte* communications should be reported.

## 9.2. Discussion

Normally in any quasi-legislative proceeding, “*ex parte* communications are allowed without restriction or reporting requirement.” (Rule 8.3(a) of the Commission’s Rules of Practice and Procedure.) But the Commission does have the authority “in special cases and for good cause shown,” to “permit deviations from the rules.” (Rule 1.2 of the Commission’s Rules.)

In this instance, we believe there is good cause to deviate from Rule 8.3(a) and, instead, require that all *ex parte* communications be reported pursuant to Rule 8.4. The TNC industry is in a constant state of change in terms of its operations and regulation. For example, since we issued D.13-09-045, there have been news articles and blogs regarding:

- Changes in TNC insurance offerings;<sup>50</sup>
- Formulation of the Insurance Working Group;<sup>51</sup>
- Positions on how TNCs respond to incidents involving their TNC drivers;<sup>52</sup>

---

<sup>50</sup> Ellen Hunt, *Drivers for Uber, Lyft stuck in insurance limbo*, SFGate, January 29, 2014, updated on February 2, 2014, [www.sfgate.com/bayarea/article/Drivers-for-Uber-Lyft-stuck-in-insurance-limbo-5183379.php](http://www.sfgate.com/bayarea/article/Drivers-for-Uber-Lyft-stuck-in-insurance-limbo-5183379.php) ; Marc Lifsher *Ride-sharing firm Lyft says it has improved insurance*, Los Angeles Times, February 6, 2014, <http://articles.latimes.com/2014/feb/06/business/la-fi-rideshare-insurance-20140207>.

<sup>51</sup> Ryan Lawler, *Lyft Announces Rideshare Insurance Coalition And Additional Coverage For Its Drivers*, Techcrunch.com, February 5, 2014, <http://techcrunch.com/2014/02/05/lyft-insurance/>.

<sup>52</sup> Vivian Ho, *Lyft driver strikes elderly woman in S.F.*, SFGate, January 18, 2014, [www.sfgate.com/crime/article/Lyft-driver-strikes-elderly-woman-in-S-F-5154019.php](http://www.sfgate.com/crime/article/Lyft-driver-strikes-elderly-woman-in-S-F-5154019.php), Josh Constine, *Uber’s Denial of Liability in Girl’s Death Raises Accident Accountability Questions*,

- Other city and state attempts to regulate the TNCs (e.g., Seattle, Washington, Rhode Island; Pittsburg, Pennsylvania; Dallas, Texas; Georgia; Colorado; Detroit, Michigan; and Milwaukee, Wisconsin);<sup>53</sup>
- TNC changes in pricing variables and formulas;<sup>54</sup>
- Changes in TNC background-checking programs;<sup>55</sup>

---

Techcrunch.com, January 2, 2014, <http://techcrunch.com/2014/01/02/should-car-services-provide-insurance-when-ever-their-driver-app-is-open/>.

<sup>53</sup> See e.g., Adam Mertz, *Pilot program to regulate Seattle rideshares*, KING5.com, December 11, 2013, [www.king5.com/news/cities/seattle/Uber-235517131.html](http://www.king5.com/news/cities/seattle/Uber-235517131.html); Kim Kalunian, *Uber: New state-imposed charge will drive us out of RI*, WPRO News, October 30, 2013, [www.630wpro.com/common/page.php?feed=2&pt=NEWS%3A+Uber%3A+New+state-imposed+charge+will+drive+us+out+of+RI&id=26573&is\\_corp=](http://www.630wpro.com/common/page.php?feed=2&pt=NEWS%3A+Uber%3A+New+state-imposed+charge+will+drive+us+out+of+RI&id=26573&is_corp=); Andy Vuong, *PUC to investigate low-cost ride-sharing service Lyft and uberX* The Denver Post, December 11, 2013, [www.denverpost.com/business/ci\\_24698031/puc-investigate-low-cost-ride-sharing-services-lyft](http://www.denverpost.com/business/ci_24698031/puc-investigate-low-cost-ride-sharing-services-lyft); David Maly, *As Uber Looks to Expand, Debate Flares Over Dallas' Code* Texas Tribune, November 1, 2013, [www.texastribune.org/2013/11/01/uber-making-headway-texas-expansion/](http://www.texastribune.org/2013/11/01/uber-making-headway-texas-expansion/); P. Kenneth Burns, *Opponents Move to Shave Lyft Mustache in Maryland*, WYPR.org, November 22, 2013, <http://news.wypr.org/post/opponents-move-shave-lyft-mustache-maryland>; JC Reindl, *Uber car service rolling into regulatory trouble in Detroit*, Detroit Free Press, February 16, 2014, [www.freep.com/article/20140216/BUSINESS06/302160040/Uber-car-service](http://www.freep.com/article/20140216/BUSINESS06/302160040/Uber-car-service); Katie DeLong, *Committee passes motion for investigation into Uber app*, Fox6now.com, February 19, 2014, <http://fox6now.com/2014/02/19/committee-passes-motion-to-conduct-investigation-into-uber-app/>; Kim Lyons and Moriah Ballingit, *Ride-share firms gain more traction with support from PUC*, Pittsburgh Post-Gazette, February 24, 2014, [www.post-gazette.com/business/2014/02/25/Ride-share-firms-gain-more-traction-in-Pa-talks/stories/201402250111](http://www.post-gazette.com/business/2014/02/25/Ride-share-firms-gain-more-traction-in-Pa-talks/stories/201402250111); and Dug Begley, *Lyft Launches in Houston Friday, but with City Eyeing Enforcement*, McClatchy News Service, February 20, 2014, [www.houstonchronicle.com/news/transportation/article/Lyft-launching-Friday-but-with-city-eyeing-5249944.php](http://www.houstonchronicle.com/news/transportation/article/Lyft-launching-Friday-but-with-city-eyeing-5249944.php).

<sup>54</sup> Salvador Rodriguez, *Sidecar: California riders will be required to pay minimum fares*, Los Angeles Times, November 15, 2013, <http://articles.latimes.com/2013/nov/15/business/la-fi-tn-sidecar-california-pay-minimum-fares-20131115>; Donna Tam *Ride-sharing service Sidecar lets drivers name their own prices*, CNET.com, February 19, 2014, [http://news.cnet.com/8301-1035\\_3-57619086-94/ride-sharing-service-sidecar-lets-drivers-name-their-own-prices/](http://news.cnet.com/8301-1035_3-57619086-94/ride-sharing-service-sidecar-lets-drivers-name-their-own-prices/).

<sup>55</sup> Colleen Taylor, *Uber Beefs Up Its Background Checking System*, Techcrunch.com, February 12, 2014, <http://techcrunch.com/2014/02/12/uber-beefs-up-its-background-checking-system/>.

- Concerns over TNC's ability to provide services to the disabled community;<sup>56</sup>
- Litigation over whether TNC drivers are employees or independent contractors;<sup>57</sup>
- Whether the new TNC practice of splitting the cost of a ride between multiple passengers violates Pub. Util. Code § 5401;
- Whether TNC drivers must use their applications in a manner consistent with California Vehicle Code §§ 23123(a) and 23123.5;<sup>58</sup> and,
- Whether TNCs must advise subscribing TNC passengers when surge pricing is in effect in accordance with the notice requirements set forth in Pub. Util. Code § 451.

We will consider some of these issues as part of Phase II of this proceeding. To the extent any "interested person"<sup>59</sup> wishes to bring information about any of the above topics – as well as other topics not listed above that are relevant to this proceeding – to a "decision-maker,"<sup>60</sup> we believe that it is vital to the assurance of due process and to the orderly and efficient dissemination of information that

---

<sup>56</sup> Carolyn Said, *As Uber, Lyft, Sidecar grow, so do concerns of disabled*, SFGate, February 18, 2014, updated on February 25, 2014, [www.sfgate.com/news/article/As-Uber-Lyft-Sidecar-grow-so-do-concerns-of-5240889.php](http://www.sfgate.com/news/article/As-Uber-Lyft-Sidecar-grow-so-do-concerns-of-5240889.php).

<sup>57</sup> Bob Egelko, *Uber drivers' suit over tips clears hurdle*, SFGate, December 7, 2013, [www.sfgate.com/business/article/Uber-drivers-suit-over-tips-clears-hurdle-5044858.php](http://www.sfgate.com/business/article/Uber-drivers-suit-over-tips-clears-hurdle-5044858.php); *Douglas O'Connor and Thomas Colopy v. Uber Technologies, Inc. Travis Kalanick, and Ryan Gravers*, (2013) U.S.D.C. ND.

<sup>58</sup> See Liu Complaint, ¶ 49.

<sup>59</sup> Pursuant to Rule 8.1(d), "interested person" means any party to the proceeding or the agents or employees of any party; any person with a financial interest, as described in Government Code § 87100, et seq.; or a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission.

<sup>60</sup> Pursuant to Rule 8.1(b), "decisionmaker" means "any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge."

all parties to this proceeding receive notice of the communications in accordance with Rule 8.4. The disclosure of communications between “interested persons” and “decision-makers” will give other “interested persons” the opportunity to evaluate the truthfulness and accuracy of the communications in an open forum.

**10. The Reporting Requirements set forth in Rule 8.4 shall cover communications between “interested persons” and the Commission’s Policy and Planning Division.**

There is also good cause to require the reporting requirements set forth in Rule 8.4 to cover communications between “interested persons” and the Commission’s Policy and Planning Division such that any communication between an “interested person” and Policy and Planning Division must be reported in accordance with Rule 8.4. While not within the definition of a “decision-maker,” Policy and Planning Division has nonetheless played a visible role in this proceeding. For example, Policy and Planning Division:

- Facilitated the Phase I workshop;
- Worked with Commission staff in proposing the regulations that were adopted in our Phase I decision;
- Addressed the San Francisco Board of Supervisors on the Commission’s regulation of the TNC industry;
- Spoke on behalf of the Commission to the media after the proposed decision from Phase I was issued;<sup>61</sup>
- Communicated with and met with parties and their counsel in this proceeding; and,
- Communicated with the California Department of Insurance and PIFC regarding the decision’s insurance requirements.<sup>62</sup>

---

<sup>61</sup> “Ride-share” Services on Road to Legitimacy Forum with Michael Krasny. [KQED Radio](http://www.kqed.org/a/forum/R201308060930), August 6, 2013, available online at [www.kqed.org/a/forum/R201308060930](http://www.kqed.org/a/forum/R201308060930).

<sup>62</sup> Letters from PIFC and Department of Insurance dated September 9, 2013.

We are concerned that “interested persons” may direct their communications to Policy and Planning Division without sharing this information with the “decision-makers” and parties to the proceeding, thus frustrating the evenhanded flow of information that is critical to the fair administration of the Commission’s proceedings. Given the role it has played, we consider it important that any further communications between “interested persons” and Policy and Planning Division be subject to Rule 8.4.

**11. Comments on the Alternate Decision**

The alternate decision of Commissioner Sandoval was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure.

Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**12. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Robert Mason III is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. D.13-09-045 did not define the phrase “providing TNC services.”
2. Parties have differing interpretations of the phrase “providing TNC services.”
3. The California Department of Insurance has advocated a definition of “providing TNC services” that is different than how some insurance companies have defined “providing TNC services.”
4. Some parties have taken the position that a TNC driver’s personal automobile insurance will not apply to an incident arising out of the TNC driver

“providing TNC services because of the presence of the public conveyance or livery exclusion.

5. Some insurance companies have taken the position that a TNC driver’s personal automobile insurance will not apply to an incident arising out of the TNC driver “providing TNC services because of the presence of the public conveyance or livery exclusion.

6. AB 2293 created Article 7 and it is added to Chapter 8 of Division 2 of the Pub. Util. Code. Article 7 commences with § 5430 and is titled Transportation Network Companies.

7. AB 2293 imposes separate insurance requirements on Transportation Network Companies for Periods One and Period Two. In Period One, AB 2293 requires primary insurance in the amount of at least \$50,000 for death and personal injury per person, \$100,000 for death and personal injury per incident, and \$30,000 for property damage. For Period One, AB 2293 also requires excess coverage for the Transportation Network Company and the driver of at least \$200,000 per occurrence to cover liability arising from a participating driver using a vehicle in connection with a Transportation Network Company’s online-enabled application or platform. In Period Two, AB 2293 requires primary insurance in the amount of \$1,000,000 for death, personal injury, and property damage. For Period Two, AB 2293 also requires uninsured motorist coverage and underinsured motorist coverage in the amount of \$1,000,000 from the moment a passenger enters the vehicle of a participating driver until the passenger exits the vehicle.

8. AB 2293 goes into effect on July 1, 2015.

9. A gap exists between now and July 1, 2015 for fulfilling AB 2293’s Period One insurance requirements.

10. It is possible that TNC drivers are not insured for uninsured/underinsured motor vehicle coverage while they are “providing TNC services.”

11. Uber is conducting business in California with the permission of the Commission.

12. Uber is required to provide the Commission with proof of public liability and property damage insurance applicable to “providing TNC services.”

13. Uber is required to keep its required insurance active and in effect, and its proof of insurance must be on file with the Commission while Uber is conducting business in California.

14. The TNC industry is in a constant state of change in terms of its operations and regulation.

15. Communications between “interested persons” and “decisionmakers” have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.

16. Communications between “interested persons” and the Commission’s Policy and Planning Division have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.

### **Conclusions of Law**

1. A TNC driver’s personal automobile insurance typically contains a “public or livery conveyance” exclusion.

2. Commercial liability insurance is designed to cover the insured for liability to a third party for bodily injury or property damage.

3. Uninsured/underinsured motorist vehicle coverage is intended to cover risks not covered by commercial liability insurance.

**O R D E R****IT IS ORDERED** that:

1. A “transportation network company” or TNC is an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.

2. As used in this decision, “participating driver” or “driver” is any person who uses a vehicle in connection with a transportation network company’s online-enabled application or platform to connect with passengers for purposes of hire.

3. As used in this decision, “transportation network company insurance” is a liability insurance policy that specifically covers liabilities arising from a driver’s use of a vehicle in connection with a transportation network company’s online-enabled application or platform.

4. A transportation network company shall disclose in writing to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network company provides while the driver uses a vehicle in connection with a transportation network company’s online-enabled application or platform, and shall advise a participating driver in writing that the driver’s personal automobile insurance policy will not provide coverage because the driver uses a vehicle in connection with a transportation network company’s online-enabled application or platform.

5. A transportation network company shall also disclose in writing to participating drivers, as part of its agreement with those drivers, that the driver's personal automobile insurance policy will not provide collision or comprehensive coverage for damage to the vehicle used by the driver from the moment the driver logs on to the transportation network company's online-enabled application or platform to the moment the driver logs off the transportation network company's online-enabled application or platform.

6. Providing transportation network company services is defined as follows:

"Transportation network company services" refers to the period of time that commences when a participating driver in a transportation network company logs onto the transportation network company's online-enabled application or platform and ceases when the participating driver logs off the transportation network company's online-enabled application or platform. Transportation network company services have two distinct time periods, as follows:

- (1) Period One runs from the time a participating driver logs onto the transportation network company's online-enabled application or platform until the driver accepts a request to transport a passenger.
- (2) Period Two runs from the time a participating driver accepts a ride request on the transportation network company's online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the passenger safely exits the vehicle, whichever is later.

7. Notwithstanding the coverage options described for Periods One and Two, the vehicle used by a participating driver in TNC services shall be considered a public or livery conveyance and shall be considered as providing delivery of persons or passengers for compensation or a fee. Unless coverage for transportation network services is separately and specifically stated in an

insurance policy and priced pursuant to approval by the Department of Insurance, a participating driver's personal automobile insurance policy shall not provide coverage for transportation network company services, and the insurer under that policy shall have no duty to defend and/or indemnify for claims resulting from provision of those services.

8. The requirement that transportation network companies (TNCs) maintain liability insurance policies is modified as follows:

Period One: the TNC insurance shall be primary and in the amount of at least fifty thousand dollars (\$50,000) for death and personal injury per person, one hundred thousand dollars (\$100,000) for death and personal injury per incident, and thirty thousand dollars (\$30,000) for property damage. The TNC shall also maintain at least two hundred thousand dollars (\$200,000) in excess coverage insuring the TNC and the driver that will apply on a per incident basis to cover any liability arising from a participating driver using a vehicle in connection with a TNC's online-enabled application or platform.

Period Two: the TNC insurance shall be primary and in the amount of one million dollars (\$1,000,000) per incident for death, personal injury, and property damage. TNCs shall also maintain uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars (\$1,000,000) per incident that shall apply from the moment a passenger enters the vehicle of a participating driver until the passenger safely exits the vehicle. The uninsured motorist coverage and underinsured motorist coverage may also apply during any other part of Period Two if requested by the participating driver.

9. As for the Period One insurance requirements, TNCs must purchase their required insurance within thirty days from the date this decision has been issued.

10. The requirements for the Transportation Network Company insurance coverage required for Period One may be satisfied by any of the following:

- (a) Transportation Network Company insurance maintained by a participating driver;
- (b) Transportation Network Company insurance maintained by a Transportation Network Company that provides coverage in the event a participating driver's insurance policy has ceased to exist or has been cancelled, or the participating driver does not otherwise maintain transportation network company insurance; or
- (c) Any combination of (a) and (b).

11. The requirements for the transportation network company insurance coverage required by Period Two may be satisfied by any of the following:

- (a) Transportation Network Company insurance maintained by a participating driver;
- (b) Transportation Network Company insurance maintained by a transportation network company; or
- (c) Any combination of (a) and (b).

12. The transportation network company insurer providing coverage for Period One, Period Two, or both, shall have the duty to defend and indemnify the insured.

13. The insurances that we require for the transportation network companies must be issued by a company licensed to write insurance in this state, or by non-admitted insurers subject to Insurance Code § 1763.

14. These modifications to the transportation network company insurance requirements shall also apply to Uber Technologies, Inc.

15. The Commission exercises its authority under Rule 1.2 of the Commission's Rules of Practice and Procedure (Rules) to make Rule 8.4 (Reporting *Ex Parte* Communications) applicable to this proceeding.

16. In addition, the Commission determines that the reporting requirement in Rule 8.4 should, and hereby does, cover communications between “interested persons,” as defined in Rule 8.1(d), and the Commission’s Policy and Planning Division.

17. Finally, those portions of D.13-09-045 that have not been modified by either this decision or Decision (D.) 14-04-022, remain in force and effect.

Rulemaking 12-12-011 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.